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Cung Ngoc Phan

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/736,554
Filing Date: December 13, 2000
Appellant(s): PHAN, CUNG NGOC

Leanne R. Taveggia
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 17, 2006, appealing from the Office action mailed October 17, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Anon., "ArsDigita Power's Nation's Leading Online Wine Exchange:
WineAccess.com," Business Wire, July 17, 2000.

The Microsoft Press Computer Dictionary, third edition, Microsoft Press, Redmond, 1997, pages 238, 430, 462, and 505.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over the anonymous article, "ArsDigita Powers Nation's Leading Wine Exchange: WineAccess.com," hereinafter "ArsDigita." "ArsDigita" discloses a computer implemented system for distributing inventory data acquired from point-of-sale systems at any one of a plurality of retail systems, comprising: (b) a plurality of in-store systems for processing, storing, and communicating data (paragraphs beginning "WineAccess.com supports," and "From a seller's website"); (c) a plurality of subscriber systems for generating and processing requests for data (paragraphs beginning "WineAccess.com supports," and "From a seller's website," the subscriber systems not being expressly disclosed, but implied by the ability of consumers/members to access a Web site); and (d) a host system, operably coupled to the in-store systems and the subscriber systems, for processing, storing, and communicating data between the

plurality of subscriber systems and the plurality of in-store systems (paragraphs beginning "WineAccess.com supports," and "From a seller's website," the host system being implied by the disclosure of a web site being hosted).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over "ArsDigita" as applied to claim 1 above, and further in view of the Microsoft Press Computer Dictionary. From the disclosures of "ArsDigita" regarding store Web sites, personal Web pages, and Wineaccess.com (paragraphs beginning "WineAccess.com supports," and "From a seller's website"), and the inherent properties of Web sites, the in-store systems, the subscriber systems, and the host system must be coupled to one another through a communication network (presumably the World Wide Web), configured to transmit and receive data among the in-store systems, the subscriber systems, and the host system. "ArsDigita" does not expressly disclose supporting a transmission control protocol/Internet protocol (TCP/IP) and hypertext transfer protocol (http), but the Microsoft Press Computer Dictionary teaches that the Internet supports TCP/IP and HTTP (definition of HTTP, page 238; definition of TCP/IP, page 462). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to have the communication network support tcp/ip, for the obvious advantage of being able to use the Web, as disclosed by "ArsDigita."

Claims 3, 4, 5, 9, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over "ArsDigita" and the Microsoft Press Computer Dictionary as applied to claim 2 above, and further in view of official notice. As per claim 3, "ArsDigita"

discloses that the in-store systems further comprise point-of sale devices used to process sales transactions and generate sales transaction data and generate inventory data at a place of business of a merchant (paragraph beginning, "WineAccess.com supports"); the same paragraph implies an in-store communicator used to transmit and receive data in substantially real-time through the communication network, and a memory database used to store inventory data (from the disclosure of building each store's Web site, using the store's own point-of-sale system to automatically update and market that store's inventory). "ArsDigita" does not expressly disclose storing the sales transaction data, but the sales transaction data would have to be stored, at least temporarily, in the course of updating the inventory. "ArsDigita" does not expressly disclose a memory database storing merchant identification data, but official notice is taken that it is well known for commercial Web sites to identify the merchants whose Web sites they are; therefore, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the memory database to store merchant identification data, for the obvious advantage of identifying the merchant on the Web site, and letting customers know from whom they were buying, etc.

As per claim 4, "ArsDigita" does not expressly disclose a browser component, but the Microsoft Press Computer Dictionary teaches that Web browsers are well known (definition of "Web browser," page 505). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the

system to comprise a browser component, to enable consumers to view store inventory and other information, as disclosed in "ArsDigita."

Likewise, "ArsDigita" does not expressly disclose a virtual store server usable to access merchant inventory data, but does disclose a Web site for accessing updated inventory data and shopping for wines, and further discloses that members have personal Web pages (paragraphs beginning "WineAccess.com supports," and "From a seller's website"); also, the paragraph beginning, "Transaction: enables e-commerce beyond simple transaction processing" implies that simple transaction processing in e-commerce is well known and carried out, so that online sales of goods or services offered for sale by a given merchant are processed. The Microsoft Press Computer Dictionary teaches servers, (page 430, definition of "server," sense 2) enabling (inter alia) Web sites and Web pages to function; hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for each subscriber system to comprise a virtual store server, for the obvious advantage of enabling the subscriber system to access inventory data, etc., as disclosed.

As per claim 5, "ArsDigita" discloses that the host matches the consumer with a local retailer screened for wine knowledge, customer service, and selection (paragraph beginning "Store Finder:."), implying a database of merchant identification data and inventory data, a host system communicator to receive and transmit data between a plurality of in-store systems and a plurality of subscriber systems (refer again to paragraphs beginning "WineAccess.com supports," and "From a seller's website") and a data distributor to process data requests from the subscriber systems; referring the

customer to a particular retailer's Web site, as disclosed in the paragraph beginning "Wineaccess.com supports," implies storing merchant network address data, as well as teaching automatically updating the store's inventory on the store's Web site.

"ArsDigita" does not expressly disclose that the communicator receives and transmits data in substantially real-time, but official notice is taken that it is well known for Web servers to receive and transmit data in substantially real-time. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the communicator to receive and transmit data in substantially real-time, for the obvious advantage of accurately informing of stores' current inventories of products to be marketed, and other relevant information.

As per claim 9, referring the customer to a particular retailer's Web site, as disclosed in the paragraph of "ArsDigita" beginning "Wineaccess.com supports," implies storing merchant network address data, as noted above in regard to claim 5.

As per claim 10, "ArsDigita" discloses that the host system is configured to communicate with the in-store systems on behalf of the subscriber systems (paragraphs beginning "WineAccess.com supports," "From a seller's website," "Store Finder:," and "Transaction:").

As per claim 11, "ArsDigita" discloses that the host matches the consumer with a local retailer screened for wine knowledge, customer service, and selection (paragraph beginning "Store Finder:"), implying that the host possesses selection information, such as the inventory information updated from the store's in-store POS system (paragraph beginning "WineAccess.com supports"); furthermore, if the store Web sites which

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WineAccess.com custom builds are accessed through the host site of WineAccess.com, inventory and other data are forwarded to the subscriber system at once or later from the host system. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to send inventory data from the in-store systems to the host system, the host system configured to either forward the inventory data to the subscriber system or store the inventory data in the host system for later access by the subscriber system.

Claim 6, 12, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the anonymous article, "ArsDigita Powers Nation's Leading Wine Exchange: WineAccess.com," hereinafter "ArsDigita." As per claim 6, "ArsDigita" discloses a method for processing and distributing inventory data through a communication method, comprising: maintaining and updating inventory data (paragraph beginning "WineAccess.com supports"), and matching a consumer with a local retailer screened for wine knowledge, customer service, and selection (paragraph beginning "Store Finder:"); implying a database of merchant identification data and inventory data, and transmitting data from an in-store system to a host system over the communication network; as well as indexing and storing the current inventory, merchant identification data, and merchant network address data so that it can be matched (paragraphs beginning "WineAccess.com supports," and "From a seller's website," as well as "Store Finder:"). Additionally, "ArsDigita" discloses access to a database of over 250,000 wines, and enabling customers to see what items are currently in stock, and

shop for "top rated" wines (ibid.), implying processing requests for inventory data with a data distributor in the host system using said data in response to receiving a request for inventory data from a subscriber system.

As per claims 12, 13, and 14, they are closely parallel to claims 9, 10, and 11, respectively, and rejected on the same grounds set forth above for those claims.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over "ArsDigita" as applied to claim 6 above, and further in view of official notice. As per claim 7, "ArsDigita" does not disclose using the indexed and stored merchant network address data to initiate communication between the host system and the in-store system to retrieve inventory data when a request is made by a subscriber system, but official notice is taken that it is well known to use stored network address data (e.g., URL's) to initiate communication with a remote computer, and retrieve data. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to use the indexed and stored merchant network address data to initiate communication between the host system and the in-store system to retrieve inventory data when a request was made by a subscriber system, for the obvious advantage of readily obtaining up-to-date information on retailers' available selections.

As per claim 8, "ArsDigita" discloses a communication connection from the in-store system to the host system (paragraphs beginning "WineAccess.com supports," and "From a seller's website," as well as "Store Finder."); "ArsDigita" discloses the in-store system updating current inventory data on a Web site (paragraph beginning

“WineAccess.com supports”); and “ArsDigita” implies storing the data by the host, as set forth in the rejection of claim 6 above, which implies triggering the in-store system to transmit current inventory data and merchant identification data. “ArsDigita” does not disclose triggering the in-store system to transmit merchant network address data, but official notice is taken that it is well known to request current identification or address data. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant’s invention to do, for the obvious advantage of maintaining up-to-date records of a merchant’s network address, for contact at need.

(10) Response to Argument

The questions at issue are whether the independent claims are obvious in view of “ArsDigita,” whether several of the dependent claims are likewise obvious in view of “ArsDigita,” and whether the remaining claims are obvious in view of “ArsDigita” in view of well-known facts taught by the Microsoft Press Computer Dictionary, or of which official notice was taken. Examiner maintains that all of the claims are obvious, as set forth above, and will address Appellant’s arguments to the contrary.

Appellant argues that the “ArsDigita” reference (“ArsDigita Powers Nation’s Leading Wine Exchange: WineAccess.com”), fails to teach a host system, operably coupled to the in-store systems and the subscriber systems for processing, storing, and communicating data between the plurality of in-store systems, as recited in claim 1 (pages 7 and 8 of the Appeal Brief). Examiner maintains that given the disclosure of a website being hosted in “ArsDigita,” the host system is necessarily implied. This is not

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merely a matter of probability or possibility, but of necessity. Examiner is unable to conceive of how a hosted website could exist without a host system, and Appellant provides no examples. A less trivial question is whether the host system is operably coupled to the in-store systems and the subscriber systems as recited. "ArsDigita" recites, "WineAccess.com delivers true collaboration between wine retailer, distributors and consumers," and goes on to specify, "WineAccess.com custom builds each store's Web site, using the store's own point-of-sale system to automatically update and market that store's inventory of wines." Thus, the host system is very definitely and unambiguously coupled to the in-store systems.

The subscriber system is defined by the instant application as including both a virtual stores server and a browser by which customers connect to the system (specification, page 7, line 10, through page 9, line 19; Figure 1). For customers to access a seller's Web site, as "ArsDigita" discloses, they would have to have browsers for doing so, and for the virtual stores server to be to sell wines on the Web, update and market the store's inventory of wines, etc., as "ArsDigita" discloses, the virtual stores server would have to be operatively coupled to the host system. Again, Appellant offers no examples to suggest how the functions disclosed in "ArsDigita" could be carried out without the "subscriber system," as defined by Appellant's specification, being coupled to the host system.

Regarding claim 6 (the other independent claim), Appellant argues that "ArsDigita" fails to disclose the method steps, in particular, transmitting current inventory data, merchant identification data, and merchant network address data from an in-store

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system to a host system over the communication network. Examiner replies that “ArsDigita” discloses, in building each store’s Web site, using the store’s own point-of-sale system to automatically update and market that store’s inventory of wines, which is to say that “ArsDigita” does disclose transmitting current inventory data from an in-store system to a host system. “ArsDigita” does not expressly disclose transmitting merchant identification data, and merchant network address data, but Examiner holds this to be obvious, in that one would need to provide identification data when hosting 23 wine shops across the country, or the over 100 wine shops in which the “ArsDigita” article reports expecting to see the system implemented by year’s end. If an in-store point-of-sale system sent a message to the hosting server to the effect, “An in-store customer has bought the last bottle of 1995 Rüdesheimer Drachenstein Riesling, so cease to offer it as available at the Web site,” the host would have to have a way to identify and authenticate the message, since there would be a multiplicity of wine shops, with their respective Web sites, and it would be necessary to know which merchant Web site was to be updated to reflect the change. Appellant argues that elements which are implied in the prior art can only be so when they are necessarily present, to which Examiner replies that claim 6 was not rejected under 35 U.S.C. 102 as anticipated by “ArsDigita,” but under 35 U.S.C. 103, as obvious in view of “ArsDigita.” Examiner does not maintain that all elements of claim 6 are inherent from “ArsDigita,” but that those which are not expressly taught are obvious, as useful in accomplishing what “ArsDigita” discloses as being done. If a claim can properly be rejected as obvious in view of a combination of

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several references, no one of which discloses all of its elements, a claim can surely be obvious in view of a single reference.

Further in regard to claim 6, Appellant argues that “ArsDigita” does not disclose indexing and storing the current inventory data, merchant identification data, and merchant network address data using a host system database at the host system. Examiner replies that “ArsDigita” discloses matching a consumer with a local retailer screened for wine knowledge, customer service, and selection (paragraph beginning “Store Finder:”). If the retailers are screened for selection, then the host system must have data on what selections are available at what retailers, and search through a database containing this data, which implies indexing and storing the current inventory data, with identification of merchants, to know what inventory is available at which merchants. The same paragraph of “ArsDigita” states, “Customers are only directed to stores that can ship legally.” This implies that the Store Finder application does not simply recommend wine retailers within a few minutes of the customer’s home, but refers the customers to sellers’ Web sites, which are expressly disclosed elsewhere in the “ArsDigita” article. In order to do so, the “ArsDigita” system would store the merchant network address data, and index the address data (URL’s) to the various merchants.

Yet further in regard to claim 6, Appellant argues that “ArsDigita” does not disclose processing requests for inventory data with a data distributor in the host system using said indexed and stored inventory data, merchant identification data, and merchant network address data in response to receiving a request for inventory data

from a subscriber system. Examiner replies that, in addition to what has been set forth in the preceding paragraphs of this Examiner's Answer, "ArsDigita" discloses that consumers have access to a database of over 250,000 wines, and are enabled to see what wines are currently in stock at wine shops. This very definitely implies processing requests for inventory data, since "ArsDigita" does not say that complete lists of available wines in inventory are sent to consumers unsolicited. While "ArsDigita" discloses that members can query their local wine shop to see what items are in stock, the disclosed system is not limited to querying one's local wine shop, but also involves the host system, because, "From a seller's Web site, consumers have access to a database of over 250,000 wines," and because of the Store Finder application, as discussed above.

In short, while "ArsDigita" does not expressly disclose all elements of claim 6, claim 6 recites the back-end of storing data, processing requests, etc., inherent or strongly implied in order to provide the services to customers and merchants described in the "ArsDigita" press release, and should therefore be considered obvious in view of "ArsDigita."

Next, at the bottom of page 9 of the Appeal Brief, Appellant addresses claim 12-14, which depend on claim 6, making only the argument that these claims should be allowed because claim 6 should be allowed. Examiner replies that claim 6 is legitimately found obvious in view of "ArsDigita," and therefore that claim 12-14 are legitimately rejected as well, since they, like claims 9-11, to which they are parallel, recite nothing non-obvious.

Regarding claim 2, Appellant argues that it is not obvious for at least the same reasons as claim 1. Examiner maintains the rejection of claim 1, and given “ArsDigita’s” disclosed use of the Web, the computer implemented system recited cannot be made patentable by specifying the use of transmission control protocol/internet protocol and hypertext transfer protocol, which are taught by the Microsoft Press Computer Dictionary as standard on the Internet and World Wide Web.

Next, Appellant presents further arguments against the allowability of claims 3 and 4 (pages 10 and 11 of the Appeal Brief), and also traverses Examiner’s takings of official notice (an argument about that is also set forth on pages 6 and 7 of the Appeal Brief). Claims 3 and 4 depend on claim 2, which depends on claim 1, but claims 3 and 4 recite additional limitations, some of which are not obvious from “ArsDigita” alone, and considering which Examiner took official notice. On page 6, Appellant writes that official notice of facts should be used only in limited circumstances, referring to MPEP §2144.03, writes that in the course of prosecution, Appellant clearly disagreed with the Examiner’s taking of official notice, and writes that even assuming, arguendo, that the Examiner is correct in the assertions of fact, the Examiner’s takings of official notice are insufficient to form obviousness rejections.

The Manual of Patent Examination Procedure does not forbid takings of official notice, but provides for them, and states (§2144.03 (C)), in regard to traversal of Official Notice:

C. If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence.

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without reference to the examiner's assertion of official notice would be inadequate.

Appellant's reference to having clearly disagreed with Examiner's taking of official notice must refer to the remarks accompanying Appellant's After Final Amendment of December 6, 2005, where Appellant argued against Examiner's rejections of claims 3-5 and 9-11, but did not state why the noticed fact was not considered to be common knowledge or well-known in the art, and did not specifically request that Examiner provide references to establish the facts of which official notice had been taken. Therefore, Examiner's takings of official notice have not been adequately traversed, and the remaining questions are, first, whether the facts of which Examiner took official notice are capable of such instant and unquestionable demonstration as to defy dispute, and secondly, whether, given those facts, the claimed invention is obvious. Examiner maintains that the answer to both of those questions is yes.

In rejecting claim 3, Examiner took official notice that it is well known for commercial Web sites to identify the merchants whose Web sites they are, a fact that would have been obvious to anyone who had any experience surfing the Web and

looking at e-commerce sites. This is capable of such instant and unquestionable demonstration as to defy reasonable dispute. The limitations recited in claim 3 are largely disclosed by "ArsDigita," as set forth in the rejection, above; in particular, the updating of sellers' Web sites, using the point-of-sale systems of their own stores, implies storing sales transaction data and inventory data in the in-store systems, at least temporarily, to transmit it to the Web host to automatically update and market the store's inventory, all of which is disclosed in "ArsDigita." If HTML or similar code for the Web site is maintained at the in-store system, as well as at the host, then it would be obvious for the in-store system to store merchant identification data, for the obvious advantage of identifying the merchant on the Web site, and letting customers know from whom they were buying, etc. Even if the HTML code were maintained only at a host site remote from the in-store system, there would still be the same strong motivation for the memory database to store merchant identification data, although it would be stored elsewhere than the in-store system. Even in this case, there would still be motivation for the in-store system to store merchant identification data, as set forth in the rejection of claim 6, and defended on page 12 of the Examiner's Answer, above: the host would have to have a way to identify and authenticate the message, since there would be a multiplicity of wine shops, with their respective Web sites, and it would be necessary to know which merchant Web site was to be updated to reflect the change. Thus, there would be grounds for each in-store system to store merchant identification data, so as to transmit it to the Web host when updating inventory, so the Web host would know which merchant Web site to update. For all these reasons, claim 3 is obvious in view of

the prior art explicitly of record, and a notoriously well-known fact of which official notice was taken, and not adequately traversed.

Additionally, Appellant characterizes the Examiner's Office Action as stating that the "ArsDigita" reference implies that the data is transmitted in real-time. What Examiner actually wrote was that "ArsDigita" "implies an in-store communicator used to transmit and receive data in *substantially* real-time." Appellant writes once again that an element can only be inherent when it is necessarily present, to which Examiner replies that a rejection under 103, rather than 102, can be based on an element being obvious rather than necessarily present. "ArsDigita" discloses, "using the store's own point-of-sale system to automatically update and market that store's inventory of wines," which implies transmitting and receiving data in *substantially* real-time, and the closer to real-time, the better. If the "ArsDigita" system only transmitted and received inventory updates once a month, it would do quite a poor job of achieving its functions, since customers could often try to buy wines that were no longer available, having been sold, or fail to be notified of the availability of wines that had been arrived in the store. If the inventory updates were transmitted and received daily, these problem would not occur as often, and if the inventory updates were transmitted whenever the inventory changed, or as quickly as messages could be sent over the Internet, these problems would almost never occur. "ArsDigita" discloses, in the paragraph beginning "From a seller's Web site," "They can query their local wine shop, see what items are currently in stock." The word "currently" (emphasis added) can be read as disclosing real-time updates, since if the inventory information were not updated in real-time, the information

on what items were supposedly in stock would not qualify as current. For these reasons, claim 3 is held to be obvious over “ArsDigita.”

Appellant does not dispute the well-known character of browsers, which the Microsoft Press Computer Dictionary was used to establish in regard to claim 4. Appellant does argue that the combination of cited references fails to teach or suggest the limitations of claim 5. The issues here are largely similar to the issues arising from claims 1 and 3, as discussed above, so Examiner does not think it necessary to reiterate all of the arguments set forth above. Suffice it to say that a Web host that builds each store’s Web site, as “ArsDigita” discloses, and provides updated store inventory, while identifying the merchant whose store data is being provided, would have to include a host system database as recited in claim 5. Similarly, to “automatically update and market that store’s inventory of wines,” again as “ArsDigita” discloses, a host system communicator to receive and transmit data as recited would be necessary, as well as a data distributor to process data requests from the subscriber systems. In rejecting claim 5, Examiner took explicit official notice that it is well known for Web servers to receive and transmit data in substantially real-time, another notoriously well-known fact, and one which could arguably (as above) be taken as implied by “ArsDigita’s” disclosure of seeing what items are currently in stock.

Appellant also makes brief comments in regard to claims 9, 10, and 11 (pages 12 and 13 of the Appeal Brief), that the combination of references fail to teach or suggest the features recited in those claims. As Appellant does not present any detailed arguments as to why the cited art should not be taken as disclosing what it discloses

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and implying what the rejections say that it implies, Examiner has no need to present detailed rebuttals; Examiner merely maintains and refers to the rejections set forth above.

Finally, on pages 13 and 14 of the Appeal Brief, Appellant argues against the rejections of claims 7 and 8 (which depend on independent claim 6). In rejecting claim 7, Examiner took official notice that it is well known to use stored network address data (e.g., URL's) to initiate communication with a remote computer, and retrieve data. This can scarcely be denied, and Appellant's inadequate traversal of official notice refrains from actually denying it; but Appellant then argues that this fact of which official notice was taken does not teach or suggest that a host system is in contact with an in-store system, and further, that the cited references merely suggest that WineAccess.com establishes web sites for different stores and knows what types of wines those stores carry, with no indication of any communication between a host system and an in-store system. Examiner replies that "ArsDigita" discloses using the store's own point-of-sale system, for each store, to automatically update and market that store's inventory of wine. WineAccess.com does not somehow mysteriously know what wines the different stores carry, and even if, at first, it did know, the knowledge would not stay current without appropriate action. Given that "ArsDigita" discloses "using the store's own point-of-sale system to automatically update and market that store's inventory," letting consumers "see what items are currently in stock," and screening retailers by selection, there is very definite indication of communication between a host system and an in-store system.

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The "ArsDigita" article describes a system and method very much like what Appellant claims as his invention. Being a press release rather than a patent, or a software engineer's documentation of a set of programs, it does not explicitly describe all the nuts and bolts involved in enabling the WineAccess.com system to do as it does, but these are obvious when they are not explicit or inherent.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Nicholas D. Rosen May 1 2006
NICHOLAS D. ROSEN
PRIMARY EXAMINER

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